



February 13, 2002

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-0694

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158658.

The Texas Department of Public Safety (the "department") received a request for "all records relating to the American Association of Motor Vehicle [Administrators] (AAMVA) Special Task Force on Identification Security." You claim that the requested information is not subject to the Public Information Act (the "Act"). Alternatively, to the extent we find the information is subject to the Act, you contend the information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your argument that the requested information is not "public information" and is therefore not subject to disclosure under the Act. The Act applies only to "public information" in existence at the time of the request for information. *See* Gov't Code § 552.021; *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). "Public information" is defined under section 552.002 of the Act as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995).

You explain that the "AAMVA is not a part of the Department of Public Safety or an agency of the State of Texas but a nationwide group comprised of people involved in licensing drivers and automobiles in the various states." You state that the department does not control or fund the AAMVA's Special Task Force on Identification Security (the "task force"). You further indicate that while the chief of the department's Driver License Division serves on the task force, he is serving solely as an individual rather than as a representative of the department. You state that all of the requested records were produced by the AAMVA and members of the task force, and the department does not have a right of access to this information. Rather, you indicate that the department has access to the information only as "a matter of grace on the part of" the individual serving on the task force. Based on your arguments, we find that the requested information was not collected, assembled, or maintained by or for the department for the purpose of section 552.002 of the Government Code. Therefore, the requested information is not subject to required public disclosure under the Act. See Gov't Code §§ 552.002, 552.021.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

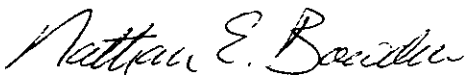
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 158658

Enc: Submitted documents

c: Mr. Chris Hoofnagle
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(w/o enclosures)